

**EXHIBIT 9 TO THE DECLARATION OF
CHRISTINA BROWN FILED IN SUPPORT
OF DEFENDANTS' OPPOSITION TO
SUPPLEMENTAL CLASS
CERTIFICATION MOTION
(ECF NO. 446)**

REDACTED

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4 IN RE: HIGH-TECH EMPLOYEE ANTITRUST
LITIGATION

5 THIS DOCUMENT RELATES TO: NO: Master Docket No.
6 11-CV-2509-LHK

7 ALL ACTIONS.

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10 CONFIDENTIAL - ATTORNEYS' EYES ONLY

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13 VIDEOTAPED DEPOSITION OF DANIEL ROBERT MCKELL
March 20, 2013
14 10:06 a.m.
Hyatt Regency Hotel
15 330 Tijeras, Northwest
Albuquerque, New Mexico
16

17 PURSUANT TO THE FEDERAL RULES OF CIVIL
18 PROCEDURE, this deposition was:

19 TAKEN BY: MR. SARAH R. SCHALMAN-BERGEN
Attorney for Plaintiffs

20 REPORTED BY: Mary Abernathy Seal, RDR, CRR, NM CCR 69
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Professional Court Reporting Service
22 201 Third Street, Northwest, Suite 1630
Albuquerque, New Mexico 87102
23

24 (6941K) MAS
25

03:42 1 Google to the list of peer companies?

2 A. Managers were asking, "Where is Google on
3 the list?" I don't -- I think Google started in
4 2004, maybe, something like that. So it became --

03:42 5 it was relevant to managers, and so if you would
6 say, "Our pay is competitive and Google wasn't on
7 the list," they would be less trusting of your data
8 than by seeing that Google was included.

9 Q. What's your understanding of why Google
03:42 10 was relevant to managers?

11 MR. SHAH: Object to form.

12 A. They're part of the technology industry
13 that we participate in in terms of -- how do we
14 describe it -- line 23 and 24, the blend of
03:43 15 semiconductor, software, networking, and diversified
16 computer companies. So they were big enough, I
17 guess, at that point that we viewed them as a
18 relevant competitor for talent and products to be
19 included.

03:43 20 Q. And why was Apple included on the list of
21 competitors?

22 MR. SHAH: Object to form.

23 A. Same reason. We compete with them for
24 products and for talent, so it's important to have
03:43 25 their data in the salary surveys that we participate

03:43 1 in.

2 Q. If you look through paragraph 8 -- do you
3 see that?

4 A. Yeah.

03:44 5 Q. Is paragraph 8, to the best of your
6 knowledge, true and accurate?

7 A. Yes.

8 Q. Okay. And looking at the first sentence
9 about employee evaluations, does that reflect or is
03:44 10 that consistent with the conversation we've had this
11 morning about employee ratings?

12 A. Yes, those are the guidelines or the
13 expectations, the actual practices plus or minus
14 those.

03:45 15 Q. And the expectations are that there are
16 certain percentages of employees that are rated in
17 each of the different categories?

18 A. Yes.

19 Q. The last sentence of paragraph 8 you talk
03:45 20 about a [REDACTED]. Do you
21 see that?

22 A. Yes.

23 Q. Can you briefly describe what you mean by
24 that?

03:45 25 A. So companies -- or as a compensation

03:45 1 practice, there's two main ways that you can deal
2 with different job markets within the same country.
3 You can establish separate market ranges for those
4 locations, or you can apply a geographical
03:45 5 differential, a premium on top of salary ranges.

6 Intel prefers to [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
03:46 10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. If you go to paragraph 9, do you see that?

03:46 15 A. Uh-huh. Yes.

16 Q. Fair to say in paragraph 9 you're talking
17 about the wide ranges of total pay available within
18 each grade?

19 A. Yes.

03:47 20 Q. Is everything in this paragraph accurate?

21 A. I was looking at page 19 of Exhibit D.
22 That's page 20.

23 Q. And for the record, we're looking at
24 Exhibit D, and you have said that actually, the
03:47 25 salary ranges you were referring to are listed on

03:47 1 page 20 of that document?

2 A. Right.

3 Q. Besides the difference in page number --

4 A. But yeah, the other is right; correct.

03:48 5 Q. Looking at page 20 for a second, which is
6 Bates number 76583DOC002007_000020, is this an
7 accurate listing of the US salary ranges effective
8 January 1, 2007, at Intel?

9 MR. SHAH: Object to form.

03:48 10 A. I believe so.

11 Q. And does this list all of the different
12 grades?

13 A. No, it does not.

14 Q. So there are additional grades that are
03:48 15 not included in these salary ranges?

16 A. That's correct.

17 Q. Where are the salary ranges or the grades
18 maintained within Intel?

19 MR. SHAH: Object to form.

03:48 20 A. The salary ranges are housed in the system
21 of records. GENI is the internal name.

22 Q. And as we discussed earlier, all of the
23 salary ranges are not available to employees who
24 don't work in compensation or HR; is that accurate?

03:49 25 A. That's right.

04:24 1 Q. Are you familiar with the first bullet
2 point?

3 A. I'm not.

4 Q. Okay. Turn to page 26 of that exhibit.
04:24 5 It has a Bates stamp ending in 7712.

6 A. Okay.

7 Q. You see this slide is titled "focal budget
8 strategy." Do you see that?

9 A. Yes.

04:24 10 Q. And four bullets points down, it says,
11 "Depending on current year position to market it may
12 take a few years to reach the base pay goals."

13 Do you see that?

14 A. Yes.

04:25 15 Q. What does that mean?

16 A. It means that just because we have a
17 change in strategy doesn't mean we implement it
18 immediately.

19 Q. So the first bullet point says, "If behind
04:25 20 the goals, a few focal cycles, (e.g., two to three
21 years) to catch the market, i.e., the three-year SMA
22 strategy kicked off in 2006."

23 Do you see that?

24 A. Yes.

04:25 25 Q. And what was the SMA strategy kicked off

04:25 1 in 2006?

2 A. So that was the change in the base pay
3 strategy to be at market versus behind market. So
4 when they decided to move base pay to market, the
04:25 5 decision was to do that over a three-year period,
6 not do it in a one-year move.

7 Q. The next bullet point says, "However, hot
8 jobs may require an immediate fix to address market
9 position issues."

04:26 10 Do you see that?

11 A. Yes.

12 Q. And is that consistent with your
13 understanding of how SMAs would work?

14 MR. SHAH: Object to form.

04:26 15 A. Yeah. A job where the market for that job
16 was moving faster than other jobs and so our market
17 position was deteriorating. Those would be
18 candidates for SMA.

19 Q. We talked about POM, or position of
04:26 20 market, earlier.

21 A. Yes.

22 Q. Can you define that?

23 A. Position of market would be your -- you
24 take the -- let's say I was looking at it for grade
04:27 25 5s in the US. I would take the average pay of Intel

04:27 1 grade 5s and divide it by the market median to get a
2 position of market. So 100 percent would be our pay
3 was at market with the midpoint.

4 Q. You can put this document aside. Let's go
04:27 5 off the record for five minutes.

6 (A discussion was held off the record.)

7 (Recess from 4:27 p.m. to 4:40 p.m.)

8 Q. Mr. McKell, is there any reason why you
9 can't continue to give me your best testimony?

04:40 10 A. No.

11 Q. Okay. You use the term "internal equity"
12 at Intel?

13 A. Yes.

14 Q. What does it mean?

04:40 15 MR. SHAH: Object to form.

16 A. Internal equity means fairness.
17 Typically, when we talk about internal equity, it's
18 how employees are paid relative to each other. It
19 can also be part of that -- "egalitarian" is another
04:40 20 term that we would say -- so from an internal equity
21 perspective, everybody participates in stock even
22 though they have different grades. So it has
23 multiple meanings depending on the specific context,
24 but generally it means fairness.

04:41 25 Q. I hand you a document that has previously

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REPORTER'S CERTIFICATE

I, MARY ABERNATHY SEAL, New Mexico CCR
#69, DO HEREBY CERTIFY that on March 20, 2013, the
Deposition of DANIEL ROBERT McKELL was taken before
me at the request of, and sealed original thereof
retained by:

Attorney for the Plaintiffs
Ms. Sarah R. Schalman-Bergen
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, Pennsylvania 19103-6365
(215) 875-3000

I FURTHER CERTIFY that copies of this
Certificate have been mailed or delivered to all
Counsel, and parties to the proceedings not
represented by counsel, appearing at the taking of
the Deposition.

I FURTHER CERTIFY that examination of this
transcript and signature of the witness was required
by the witness and all parties present.
On _____ a letter was mailed or delivered to Mr.
Sujal J. Shah regarding obtaining signature of the
witness, and corrections, if any, were appended to
the original and each copy of the Deposition.

1 I FURTHER CERTIFY that the recoverable
2 cost of the original and one copy of the Deposition,
3 including exhibits, to Mr. Sarah R. Schalman-Bergen
4 is \$_____.

5 I FURTHER CERTIFY that I did administer
6 the oath to the witness herein prior to the taking
7 of this Deposition; that I did thereafter report in
8 stenographic shorthand the questions and answers set
9 forth herein, and the foregoing is a true and
10 correct transcript of the proceeding had upon the
11 taking of this Deposition to the best of my ability.

12 I FURTHER CERTIFY that I am neither
13 employed by nor related to nor contracted with
14 (unless excepted by the rules) any of the parties or
15 attorneys in this case, and that I have no interest
16 whatsoever in the final disposition of this case in
17 any court.

18 _____
19 Mary Abernathy Seal
20 BEAN & ASSOCIATES, INC.
21 NM Certified Court Reporter #69
22 License Expires: 12/31/13

23 (6941K) MAS
24 Date taken: March 20, 2013
25 Proofread by: JB

1 IN RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION

2 WITNESS SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to
4 your deposition, indicate them below:

5 PAGE LINE

6 _____ Change to _____

7 _____ Change to _____

8 _____ Change to _____

9 _____ Change to _____

10 Any other changes to your deposition are
11 to be listed below with a statement as to the reason
for such change.

12 PAGE LINE CORRECTION REASON FOR CHANGE

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 I, DANIEL ROBERT McKELL, do hereby certify
20 that I have read the foregoing pages of my testimony
as transcribed and that the same is a true and
21 correct transcript of the testimony given by me in
this deposition on March 20, 2013, except for the
changes made.

22

23 _____
DANIEL ROBERT McKELL

24 (6941K) MAS Proofread by: JB

25